

09/838,970

LINCP105US

REMARKS

Claims 1-57 are currently pending in the subject application and are presently under consideration. Claim 1 has been amended. Favorable reconsideration of the subject application is respectfully requested in view of the following comments and amendments herein.

I. Rejection of Claims 1-57 Under 35 U.S.C. §102(e)

Claims 1-57 stand rejected under 35 U.S.C. §102(e) as being anticipated by Spear *et al.* (US 6,486,439). It is respectfully requested that this rejection be withdrawn for at least the following reason. A declaration under 37 C.F.R. §1.131 is being filed concurrently herewith.

When a prior art U.S. patent...is not a statutory bar, a 35 U.S.C. 102(e) rejection can be overcome by antedating the filing date of the reference by submitting an affidavit or declaration under 37 CFR §1.131. *In re Mathews*, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969).

As stated in the 37 CFR §1.131 declaration filed herewith, the invention of the subject of the rejected claims is prior to the effective date (February 28, 2001) of Spear, *et al.* This 37 CFR §1.131 affidavit is submitted with an amendment to the claims (*See* 37 CFR §1.116(b)) to allow seasonable presentation of the 37 CFR §1.131 affidavit pursuant to MPEP §715.09(C)(2). Accordingly, this rejection should be withdrawn.

It is also noted that the cited reference and the subject of the rejected claims was subject to an obligation of assignment to Lincoln Global, Inc. Accordingly, pursuant to 35 U.S.C. §103(c), a rejection under 35 U.S.C. §103(a) based on Spear, *et al.* would be improper.

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II. Conclusion

The present application is believed to be in condition for allowance, in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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